

***** Note: This document is merely an electronic version of the original checklist found in the 1986 State Consolidated RCRA Authorization Manual (SCRAM). This checklist has not undergone any formal legal review since publication in the SCRAM.**

STATE LEGISLATION CHECKLIST

Introduction

The checklist which follows is provided to aid attorneys and others in reviewing and documenting State hazardous waste enabling authority for Final Authorization under Section 3006(b) of the Solid Waste Disposal Act, as amended (RCRA). EPA attorneys are encouraged to involve attorneys in State Attorney Generals Offices or other State legal counsel in such reviews. States are advised to look broadly to their legislative authorities in assessing their programs.

To obtain final authorization, a State must have the enabling authority to establish a hazardous waste management program which meets the requirements of 40 CFR Part 271, Subparts A and B. Anyone using the checklist should refer to Part 271 (and the regulations in Parts 270, 124, and 260-265 to the extent they are referenced in Part 271) for a full understanding of the regulations for which a State must have enabling authority.

Attorneys should look at all relevant State statutory authority, not just a particular statute, when assessing State hazardous waste legislative authority. For example, State administrative procedure acts are often relevant. Most elements in the checklist identify enabling authority required for Final Authorization. Five elements, however, (“importation ban”, “variance provisions”, “exemptions”, “information sharing”, and “siting”) are included as a means of identifying and recording features of State law which may negatively affect a State’s ability to receive final authorization.

This checklist is intended for use as an evaluation tool and it provides valuable assistance to EPA reviewers if submitted as part of the application for Final Authorization. Also, this checklist should be of use to the State in identifying appropriate citations and comments to aid in developing the Attorney General’s Statement which is an essential element of the application.

**[State Name]
Legislation Checklist**

Title(s) of State Legislation: _____

Date Enacted: _____

Date Enacted: _____

Date Enacted: _____

Reviewed By: _____

Date: _____

Statutory Element	State Cite	Coverage Yes/No?	Comment
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DEFINITIONS

The State needs the authority to define the following terms in a manner at least as stringent as the Federal program. If definitions of these terms appear in State statutes, they must be at least as stringent as the analogous Federal Statutory or regulatory definition.

Disposal			
Generator			
Hazardous waste *			
Manifest			
Person			
Storage			
Transport			
Treatment			
Treatment, Storage or Disposal facility			
Waste (solid)			

*** Note that the State must have authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the Federal program does.**

Statutory Element	State Cite	Coverage Yes/No?	Comment
HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9]			
Authority for:			
1. HW characteristics			
2. HW list			
STANDARDS FOR GENERATORS [See 40 CFR §271.10]			
The State needs the authority to regulate all generators EPA regulates under 40 CFR Part 262.			
Authority to promulgate regulations on:			
1. I.D. numbers			
2. Requiring generator to determine whether waste is hazardous			
3. Recordkeeping practices			
4. Packaging, labeling, marking and placarding practices			
5. Use of appropriate containers			
6. Furnishing information			
7. Use of manifest consistent with DOT and EPA			
8. International shipments			

Statutory Element	State Cite	Coverage Yes/No?	Comment
9. Designation of and delivery to permitted facilities			
10. Investigation of unreturned shipments			
11. Submission of reports			

STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]

The State needs the authority to regulate all transporters EPA regulates under 40 CFR Part 263.

Authority to promulgate regulations on:			
1. I.D. numbers			
2. Recordkeeping			
3. Labeling			
4. Compliance with manifest system			
5. Spill notification			
6. Spill clean-up			
7. Transportation to permitted facility			
8. Consistency with DOT regulations			

STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12]

The State needs the authority to regulate all of the owners and operators of hazardous waste management facilities whom EPA regulates.

Authority to promulgate regulations on:			
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Statutory Element	State Cite	Coverage Yes/No?	Comment
1. I.D. numbers			
2. Recordkeeping			
3. Reporting			
4. Monitoring			
5. Inspecting			
6. Compliance with manifest system			
7. Operating methods			
8. Location, design, construction			
9. Contingency plans			
10. Training			
11. Ownership			
12. Closure and Post- Closure activities			
13. Continuity of operation			
14. Financial responsibility			
15. General conditions (see 40 CFR 270.30)			

Statutory Element	State Cite	Coverage Yes/No?	Comment
PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR §271.15 and 271.13]			
1. Require permits for owners and operators of all TSD facilities			
2. Impose construction ban			
3. Prohibit operation of facilities without permits (State may have an analogue to interim status)			
4. Require permit application information			
5. Require permits to contain all technical and administrative standards			
6. Provide for permit modifications and termination (revocation)			
7. Allow public disclosure of name and address of permit applicants and permittees			
PUBLIC PARTICIPATION			
Authority to provide:			
1. Draft permit, fact sheet, etc.			

Statutory Element	State Cite	Coverage Yes/No?	Comment
2. Notice of all draft permits by radio broadcasts and notices in newspapers, etc.			
3. 45-day public comment period on all draft permits			
4. Informal hearing with written notice of opposition			
5. Consideration of and response to public comments			

INSPECTIONS

1. Right to enter, inspect and obtain samples (at all regulated premises and where records are kept)			
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ENFORCEMENT [See 40 CFR 271.16]

Authority to:			
1. Immediately restrain unauthorized activity			
2. Sue to enjoin any threatened or continuing program violation without prior revocation of permit			

Statutory Element	State Cite	Coverage Yes/No?	Comment
3. Obtain civil penalties for any violation (maximum no less than \$10K per day)			
4. Obtain criminal penalties for specified maximum violations (no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law			
5. Allow intervention (See 40 CFR 271.16(d))			
MISCELLANEOUS			
1. Authority to share all information with EPA			
2. Variance and waiver provisions *			
3. Importation ban *			
4. Exemptions *			
5. Siting *			

* May create problems for a State seeking authorization.